
Effective: January 10, 2005

96.00 Utility Accommodation
96.10 Permit Requirements**Supersedes:** April 1, 2002

By: Director, Bureau of Highway Operations

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A. Need for a Permit

A utility shall obtain a permit from the Department before any use or occupancy of state trunk highways is allowed. This includes utilities that want to occupy an existing pole line or duct system (e.g. CATV attaching to another utility company's existing poles). Exceptions to this are enumerated in policies 96.61 through 96.64. A utility may also need a permit from the DNR. See section C of this policy.

B. Permit Authorization to Use and/or Occupy Right-of-Way

By issuance of a permit, the Department formally indicates that, subject to all applicable permit conditions, a specified use and/or occupancy of right-of-way is not adverse to the highway interests at the time of the permit approval.

The Department does not warrant that public title to the right-of-way is free and clear, does not certify that it has sole ownership, and does not indicate any intention to defend the utility in its peaceful use and occupancy of said lands.

The permit does not transfer any land, nor give, grant or convey any land right, right in land, or easement.

Written authorization from the Department does not relieve the utility from compliance with all applicable federal and state laws and codes, and local laws and ordinances that affect the design, construction, materials, or performance of its work. The Department's authorization shall not be construed as superseding any other governmental agency's more restrictive requirements. However, if the utility is directly under contract with the Department and the Department chooses to supersede local laws or ordinances or permitting requirements, then the utility shall be exempt from a governing agency's ordinances or permits under the Department's statutory authority.

The utility should retain a copy of the permit in their files during the entire time the facility is located on, over, or under state right-of-way.

All utility permits issued by the Department are revocable. Policy 96.07 highlights the steps that may be used by the Department in order to revoke a permit.

C. DNR Permits

In conjunction with the Department's Cooperative Agreement with the Department of Natural Resources (DNR), the following table has been established to guide utilities in determining when DNR permits are needed whether working on or off STH right-of-way (R/W).

DNR PERMIT REQUIREMENTS FOR UTILITY PROJECTS Guidelines for Utility Companies under the DNR/DOT Cooperative Agreement ("No" = No permit from DNR required; "Yes" = Permit from DNR required)				
DNR Permit Type →		Construction Site Stormwater (NR 216)		Wetland or Waterway Crossing (Chapter 30 & NR 103) ²
Land Disturbance Amount ¹ →		< 1 Acre	≥ 1 Acre	
Utility Work not under DOT contract ³	All on private land	No	Yes	Yes
	All on DOT R/W	No	No ⁴	Yes ⁵
	On both private land & DOT R/W	No	Yes ⁶	Yes
Utility Work under DOT contract	All on DOT R/W	No	No	No
Key to numbered comments: 1. Land disturbance includes equipment tracking and any excavation needed for construction. 2. Includes all utility construction methods such as trenching and plowing that disturb a wetland or waterway. 3. A DOT contract means a DOT improvement project or other DOT project that is let to bid and includes pay items for utility work. It does not include a utility's own project or utility facility relocations before or during a DOT improvement project. Contracts do not include utility reimbursement agreements. 4. DOT may require utility to obtain NR 216 permit for work that is in multiple counties or in environmentally sensitive areas. DOT will make determination. 5. Unless DOT notifies utility and DNR of its decision to handle review under the Cooperative Agreement. 6. If most of the utility project is on DOT right-of-way (R/W), then utility may not need a NR 216 permit. DNR will make determination.				
General comments: <ul style="list-style-type: none"> All utility work on DOT R/W requires a permit from DOT. Approved DOT utility permits do not clear utilities from obtaining the appropriate DNR permits. For DNR permits, utilities shall contact the DNR Office of Energy at 608/267-2770, 608/266-3524, or http://dnr.wi.gov/org/es/science/energy/ All utility work on DOT R/W must comply with Trans 401 if a DNR permit is not issued. See policy 96.55 for details on Trans 401 implementation for DOT-issued utility permits. Even though DOT issues utility permits and is responsible for enforcing permit and accommodation policy requirements, DNR may enforce erosion control requirements on DOT R/W – this may include shutting down a job and levying a fine. 				